

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 505 of 1994

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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BHIKHUBHAI UMARBHAI

Versus

AYESHABEN MANSURI

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Appearance:

MR PM DAVE for Petitioner

MR JS PATEL for Respondent No. 1

MR SR DIVETIA APP for Respondent No. 4

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CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/08/98

ORAL JUDGEMENT

Heard learned advocates Mr. P.M Dave for the petitioner and Mr. J.S Patel for respondent Nos.1 to 3 and learned APP Mr.S.R Divetia for respondent No. 4 State.

2. Petitioner before this Court is a Muslim husband who has been ordered to pay maintenance to his estranged wife the respondent no. 1 herein and minor daughters the respondents nos. 2 & 3. It appears that petitioner had married respondent no. 1 on 8th January, 1983 and on 11th November, 1991, the respondent no. 1 left her matrimonial house alongwith minor daughters. On 16th January, 1992, she preferred Criminal Misc. Application No. 9 of 1992 for maintenance under Section 125 CrPC before the learned Judicial Magistrate, First Class, Anand. The claim made by the respondent no. 1 was contested by the petitioner. He, inter alia, contended that he had divorced respondent no. 1 under Talaknama dated 12th November, 1991 and the respondent no. 1 being a divorced Muslim woman, her right to maintenance would be governed by the Muslim Women {Protection of Rights on Divorce} Act, 1986 and the application under Section 125 CrPC was, therefore, not maintainable. He also contended that the respondent no. 1 had left her matrimonial home of her own volition. The learned Magistrate under his judgment and order dated 12th August, 1993 partially allowed the application. The learned Magistrate held that the Talak given by the petitioner to the respondent no. 1 was not valid and that the respondent no. 1 was entitled to maintenance under Section 125 CrPC. The petitioner has been serving as an Operator in a public sector undertaking and considering his monthly income, the learned Magistrate awarded maintenance of Rs. 300/- to the respondent no. 1 and Rs. 150/- to each of the respondents nos. 2 & 3. Feeling aggrieved, the respondents nos. 1 to 3 preferred Criminal Revision Application No. 162 of 1993 before the learned Sessions Judge, Kheda. The learned Addl. Sessions Judge, Kheda under his judgment and order dated 13th September, 1994 allowed the application and enhanced the maintenance payable to the respondents nos. 1 and nos 2 and 3 to Rs. 500/- and Rs. 450/- respectively. Feeling aggrieved, the petitioner has preferred the present application under Section 397 CrPC.

Mr. Dave has submitted that the petitioner has also challenged the validity of the judgment and order of the learned Magistrate passed on 12th August, 1993, however, in view of the period of limitation, he does not press the said challenge. He has, therefore, confined his challenge to the amount of maintenance awarded to the respondents by the learned Addl. Sessions Judge, Kheda. He has contended that the learned Addl. Sessions Judge has erred in computing the income earned by the petitioner. He has submitted that though the learned Judge has taken into consideration all the allowances

earned by the petitioner, over and above his pay, he has not taken care of the deductions which are made from his salary. Thus, the finding in respect of the income of the petitioner recorded by the learned Addl. Sessions Judge is erroneous and the same is required to be quashed and set-aside. The order of the learned Magistrate be, therefore, restored.

I am afraid I cannot accept the contentions raised by Mr. Dave. Petitioner is serving in a Public Sector Undertaking and has been receiving regular salary which is being evidenced by pay slip, which is produced at Exh. 46. The learned Judge having considered the said pay slip has held that the petitioner is earning Rs. 3500/- every month. Considering the income earned by the petitioner, the maintenance awarded to the respondents nos. 1 to 3 herein cannot be said to be excessive and the same does not call for interference by this Court. Petition is, therefore, dismissed. Rule is discharged. Interim relief is vacated. The petitioner shall pay the entire amount of arrears/difference of maintenance, due and payable, to the respondents nos. 1 to 3 herein within a period of six months from today. Parties shall bear their own costs.

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Prakash\*